

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:	§	
	§	
PERSEVERANCE GROUP, LLC	§	CASE NO. 21-30584-hcm
	§	
Debtor.	§	CHAPTER 11 SUBCHAPTER V

**FINAL FEE APPLICATION
FOR COMPENSATION OF ATTORNEY FEES AND EXPENSES
IN A CHAPTER 11, SUBCHAPTER V, CASE**

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE H. CHRISTOPHER MOTT, U.S. BANKRUPTCY JUDGE:

COMES NOW MICHAEL R. NEVAREZ (hereinafter referred to as “Applicant”), of THE NEVAREZ LAW FIRM, PC (“Firm”), attorney for the Debtor-in-Possession in the above-captioned proceedings (“Debtor”), and hereby files this “Final Fee Application For Compensation Of Attorney Fees And Expense In A Chapter 11, Subchapter V, Case” (“Final Fee Application”), and for good cause in support thereof would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT.

1. In accordance with Local Bankruptcy Rule 2016(B)(1), Applicant hereby files this Final Fee Application seeking payment for fees and expenses incurred in the above-referenced matter through the period ending December 20, 2021.

II. JURISDICTION.

2. This Court has jurisdiction to consider this Final Fee Application under the provisions of 28 U.S.C. §§ 1334 and 157.

3. This matter involves the administration of a bankruptcy estate and, thus, is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

4. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Court has constitutional authority to decide this matter under *Stern v. Marshall*, 564 U.S. 462 (2011) and its progeny.

III. FACTUAL BACKGROUND.

6. On August 2, 2021, Debtor filed in this Court its emergency Voluntary Petition for Relief ("Petition"), under Chapter 11 Subchapter V of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* ("Bankruptcy Code").

7. The Debtor's Plan of Reorganization was filed November 1, 2021, and the Confirmation Hearing was scheduled for December 16, 2021. (DOC #47).

8. On November 24, 2021, Applicant filed his First Fee Application For Compensation Of Attorney Fees And Expense In A Chapter 11, Subchapter V, Case" ("Fee Application"). (DOC #69).

9. On November 16, 2021, via telephone discussion with the undersigned, Mr. Jesse Ramirez, the Debtor's Member/Manager, advised the undersigned (a) he would not work with the realtor approved by this Court, and (b) would instead hire an attorney to replace the undersigned counsel in this matter.

10. On December 9, 2021, the "Ballot Summary For Perseverance Group, LLC" was

timely filed by the undersigned counsel, in accordance with the Confirmation Order, as a ministerial action, since the undersigned was in possession of the submitted ballots. (DOC #81).

11. On December 9, 2021, as a ministerial action, the undersigned counsel filed a “Motion For Continuance of (a) Hearing on Confirmation of the Plan and (b) Deadline to File Memorandum of Legal Authorities and Proposed Order Confirming the Plan.” (DOC #82).

12. On same date, December 9, 2021, undersigned counsel filed an “Unopposed Motion to Withdraw as Attorney of Record.” (DOC #83).

13. On December 16, 2021, the Court issued its “Order Continuing Plan Confirmation Hearing and Setting Status Hearing, With Notice of Requirement for Debtor to Obtain Licensed Counsel”, continuing the hearing on confirmation of the Plan and setting a status hearing on confirmation of the Plan for January 13, 2022. (DOC #87).

14. On same date, December 16, 2021, the Court also issued its “Order Granting Motion to Withdraw as Counsel For Debtor.” (DOC #89).

15. This Final Fee Application reflects all work performed since the filing of the First Fee Application.

IV. FEE APPLICATION SUMMARY.

16. In accordance with Local Bankruptcy Rule 2016(B)(1), attached hereto as Exhibit A is a Final Fee Application Summary in the form of Appendix L-2016(B)(1), therein providing a summary description of the services rendered in this case by category, reflecting the total cost of each category of services and summarizing the nature, and purpose of each category of services rendered, and the results obtained.

17. In accordance with Local Bankruptcy Rule 2016(B)(1), attached hereto are Compensation Support Exhibits B and C, therein providing the contemporaneous time records

itemizing all services rendered in this case by category, in a format which reflects a description of each service entry, the amount of time spent rendering that service, the date the service was performed, who performed that service, and the hourly rate of the person performing that service

18. The total amount of Compensation requested herein is as follows:

Legal Fees				
	Exhibit	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Paralegal Denise D. Macias	B	\$50.00	15.33	\$766.67
Attorney Michael R. Nevarez	C	\$250.00	11.52	<u>\$2,879.18</u>
	<u>Sub-Total</u>			\$3,645.85
Expenses				<u>\$0.00</u>
	<u>Sub-Total</u>			\$3,645.85
Final Fee Application		\$250.00	1.5	<u>\$375.00</u>
	<u>Total</u>			<u>\$4,020.85</u>

V. RELIEF REQUESTED.

19. Applicant seeks an Order approving Compensation of earned fees and incurred expenses, in the amount of **\$4,020.85**, for the period beginning November 16, 2021, and ending December 20, 2021, and the payment of such fees and expenses from funds available in the Debtors' Estate.

20. A proposed form of Order is submitted with this Final Fee Application and is incorporated by reference herein.

VI. BASIS FOR RELIEF.

21. The fees and expenses requested in this Final Fee Application represents post-petition time and costs expended and incurred for the period beginning November 16, 2021, and ending December 20, 2021.

22. Applicant represents that, to the best of its knowledge, it has complied with

Bankruptcy Code §§ 330 and/or 331, the Bankruptcy Rules, the Local Rules, and the Guidelines adopted by the Executive Office for the United States Trustee.

23. All legal services performed by Applicant were performed for and on the behalf of the Debtor, and not on behalf of any other individual or entity. Subject services were rendered in discharge of Applicant's professional responsibilities as counsel to the Debtor.

24. Applicant's services were reasonable and necessary for the functioning of the Debtor, and the fulfillment of the duties of the Debtor under the Bankruptcy Code.

25. No payments have been made or promised to date except as set forth in the Applicant's Retainer Agreement, and/or as sought in this Fee Application.

26. No compensation has been shared by Applicant with any other entity

27. No agreements to share compensation exist between Applicant and any other person.

28. The time and effort expended by Applicant in this case has been for the benefit of this Estate.

29. One (1) prior fee application has been filed by Applicant.

VII. JUSTIFICATION FOR AWARD.

30. In compliance with the holding of the United States Court of Appeals for the Fifth Circuit, in *In re First Colonial Corp. of America*, 544 F.2d 1291 (1977), cert. denied, 431 U.S. 904 (1977), and in accordance with the "Johnson" factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), Applicant offers the following regarding the reasonableness of the services rendered by MICHAEL R. NEVAREZ, as follows:

- a. **Time and Labor Required for the Debtor.** A description of the time spent and services performed is summarized in the Final Fee Application

Summary attached hereto as Exhibit A, and detailed in Exhibits B and C attached hereto.

- b. **Novelty and Difficulty of the Questions.** This case presented a number of novel and unusual issues increasing the difficulty in the representation of Debtor, as follows:
- i. Due to the Debtor's repudiation of the listing agreement of realtor Ms. Debbie Figueroa, as approved by this Court, and Debtor's refusal to co-operate in the listing of Debtor's sole property, Applicant had to withdraw from representation of Debtor.
 - ii. As a result, to ensure the Debtor's compliance with the remaining requirements under the Bankruptcy Code, and this Court's Orders, Applicant continued ministerial work to allow Debtor additional time to employ substitute counsel.
 - iii. Due to the Debtor's failure to employ substitute counsel, Applicant incurred the number of hours requested herein over the period of the last month.
- c. **Skill Requisite.** To perform these legal services properly, special expertise in Bankruptcy law and business law was required.
- d. **Preclusion of Other Employment.** Due to acceptance of this case, Michael R. Nevarez was taken away from other legal matters on which he would have been paid at least as much as his proposed hourly payment in these proceedings.
- e. **Customary Fee.** The customary fee charged by Michael R. Nevarez for legal services Chapter 11 Proceedings for a Debtor \$250.00 per hour, and \$50.00 per hour for paralegal services.
- f. **Fee Fixed or Contingent.** The fee for these services is an hourly fee.
- g. **Time Limitations Imposed by the Client or Other Circumstances.**

Normal time constraints for bankruptcy work obtained in these proceedings.

- h. **Amount Involved and Results Obtained.** For the time period covered by this Application, services and expenses for the following matters (“Matters”) were rendered:

- i. Time spent and covered by this Final Fee Application, includes ministerial work to ensure Debtor’s compliance with the requirements under the Bankruptcy Code, and this Court’s Orders, so as to allow Debtor additional time to employ substitute counsel.
- ii. On November 1, 2021, the Debtor’s Plan of Reorganization for Small Business Under Chapter 11 Subchapter V was filed, and the Hearing on Confirmation of Plan was set for December 16, 2021.
- iii. On November 24, 2021, Applicant filed his First Fee Application.
- iv. On December 9, 2021, the “Ballot Summary For Perseverance Group, LLC” was timely filed.
- v. On December 9, 2021, a “Motion For Continuance of (a) Hearing on Confirmation of the Plan and (b) Deadline to File Memorandum of Legal Authorities and Proposed Order Confirming the Plan” was filed.
- vi. On December 9, 2021, an “Unopposed Motion to Withdraw as Attorney of Record” was filed.
- vii. On December 16, 2021, an “Order Continuing Plan Confirmation Hearing and Setting Status Hearing, With Notice of Requirement for Debtor to Obtain Licensed Counsel” was filed, continuing the hearing on confirmation of the Plan and setting a status hearing on confirmation of the Plan for January 13, 2022.
- viii. On December 16, 2021, an “Order Granting Motion to Withdraw as Counsel For Debtor” was filed.

- i. **Experience, Reputation, and Ability of the Attorney.** Qualifications for attorney and staff are listed in the Final Fee Application Summary. (See Exhibit A).

- j. **Desirability of the Case.** This case was a desirable case at the outset, but became extremely undesirable, due to the afore-mentioned difficulties with Debtor's Manager.
- k. **Nature and Length of the Professional Relationship with the Client.** Applicant has represented the Debtor for five (5) months. The filing of the Petition was on August 2, 2021.
- l. **Awards in Similar Cases.** Upon information and belief, similar awards on an hourly basis have been made in similar cases by this Court, when there was a showing that counsel's efforts had benefitted the estate.

VIII. MATTERS EXCLUDED.

31. This Final Fee Application does not seek payment for pre-petition fees and expenses already paid for under the Retainer Agreement between the Debtor and Applicant's Firm.

32. No post-petition fees or expenses have been paid to Applicant, as Applicant's First Fee Application has not yet been approved by this Court.

33. This intended to be a Final Fee Application, as it is not anticipated that additional legal services will be expended herein.

IX. PRAYER.

34. **WHEREFORE, ALL PREMISES CONSIDERED,** Applicant respectfully requests that the Court enter an Order (1) granting this Final Fee Application for Compensation of Attorney Fees and Expenses in a Chapter 11, Subchapter V, Case, and (2) for such other and further relief to which Applicant may be justly entitled.

Date: December 20, 2021

Respectfully submitted,

THE NEVAREZ LAW FIRM, PC
A Professional Corporation
7362 Remcon Circle
El Paso, Texas 79912
Telephone: (915) 225-2255
Facsimiles: (915) 845-3405
Email: MNevarez@LawOfficesMRN.com

/s/ Michael R. Nevarez
MICHAEL R. NEVAREZ
State of Texas Bar No. 14933400

Former Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **FINAL FEE APPLICATION FOR COMPENSATION OF ATTORNEY FEES AND EXPENSES IN A CHAPTER 11, SUBCHAPTER V, CASE** was served either by electronic means as listed on the Court's CM/ECF filing and noticing system, and/or by regular first-class mail, postage prepaid, to all creditors listed on the Debtor's creditor's matrix, and to the following parties in interest, on or about December 20, 2021:

SUBCHAPTER V TRUSTEE:

Mr. Brad W. Odell
1500 Broadway, Suite 700
Lubbock, TX 78401
Email: bodell@mhba.com
Phone: (806) 765-7491

OFFICE OF THE U.S. TRUSTEE:

Mr. James Rose
615 E. Houston Street, Suite 533
San Antonio, TX 78205
Email: James.Rose@usdoj.gov

DEBTOR-IN-POSSESSION:

Perseverance Group, LLC
P.O. Box 1734
Las Cruces, NM 88004

**TOP 20 UNSECURED
ALL SECURED CREDITORS**

/s/ Michael R. Nevarez
MICHAEL R. NEVAREZ

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE:

PERSEVERANCE GROUP, LLC

Debtor.

§
§
§
§
§

CASE NO. 21-30584-hcm

CHAPTER 11 SUBCHAPTER V

**ORDER APPROVING FINAL FEE APPLICATION FOR COMPENSATION OF ATTORNEY
FEES AND EXPENSES IN A CHAPTER 11, SUBCHAPTER V, CASE**

ON THIS DAY, came on to be considered the Final Fee Application For Compensation Of Attorney Fees And Expenses In A Chapter 11, Subchapter V, Case filed by Michael R. Nevarez, attorney for Debtor. After due consideration of the Final Fee Application, and good cause appearing, the Court has reviewed the same and noted that all required parties in interest received, as appropriate, a copy of the Final Fee Application and/or notice of the hearing on this Final Fee Application, and is of the opinion that the Final Fee Application should in all things be granted, and enters the following Order:

IT IS ORDERED that the Final Fee Application For Compensation Of Attorney Fees And Expenses In A Chapter 11, Subchapter V, Case filed by Michael R. Nevarez, attorney for Debtor is hereby granted in the amount of \$_____.

IT IS SO ORDERED.

#

Michael R. Nevarez
The Nevarez Law Firm, PC
A Professional Corporation
7362 Remcon Circle
El Paso, Texas 79912
Telephone: (915) 225-2255
Facsimiles: (915) 845-3405
Email: MNevarez@LawOfficesMRN.com